



**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**Agency Information Collection Activities: WIC Program Regulations**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection.

This collection is a revision of a currently approved collection to add the submittal of Authorized Product Lists in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) into the collection.

**DATES:** Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jerilyn Malliet, Chief, WIC EBT Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302. Comments may also be submitted via fax to the attention of Jerilyn Malliet at 703-305-2196 or via email to [Jerilyn.Malliet@fns.usda.gov](mailto:Jerilyn.Malliet@fns.usda.gov). Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Jerilyn Malliet at 703-305-2746.

**SUPPLEMENTARY INFORMATION:**

Title: WIC Program Regulations.

Form Number: N/A

OMB Number: 0584-0043

Expiration Date: April 30, 2017

Type of Request: Revision of a currently approved collection

Abstract: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides low-income pregnant, breastfeeding, and postpartum women, infants, and children up to age five with nutritious supplemental foods. The program also provides nutrition education including breastfeeding promotion and support, and referrals to health and social services. The WIC Program is administered by the USDA Food and Nutrition Service (FNS). FNS provides grant funding and issues regulations which are utilized by WIC State agencies to operate the

WIC Program and distribute benefits through local WIC clinics. The program operates throughout the 50 States, in the District of Columbia, Guam, Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, the Virgin Islands, and in 34 Indian Tribal Organizations. The Healthy Hunger-Free Kids Act of 2010 (hereinafter referred to as the HHFKA) (Pub. L. 111-296) requires all WIC State agencies to convert to an Electronic Benefit Transfer (EBT) benefit delivery method by October 1, 2020. A Proposed Rule regarding WIC EBT-related provisions from the HHFKA was published on February 28, 2013 (Federal Register February 28, 2013 at 79 FR 13549). The WIC EBT-related provisions of the HHFKA and other EBT implementation requirements included in this final rule are: (1) a definition of EBT; (2) a mandate that all WIC State agencies implement an EBT delivery method by October 1, 2020; (3) system management and reporting requirements; (4) revisions to current provisions that prohibit imposition of costs on vendors; (5) a requirement for the Secretary of Agriculture to establish minimum lane equipage standards; (6) a requirement for the Secretary of Agriculture to establish technical standards and operating rules; and (7) a requirement that State agencies use the National Universal Product Code (NUPC) database.

While a conforming amendment has added two additional State Plan requirements in addition to the requirement for an annual EBT status update, the Department considers these to be minimal reporting burden. The annual status report replaces existing updates required for benefit delivery methods using paper food instruments. The two conforming amendments clarify content for EBT delivery replacing the existing paper food instrument or other food delivery content.

The final rule at 7 CFR 246.12(y) requires each State agency to have an active EBT project within 90 days of the effective date of the regulation and, if they have not yet begun EBT

planning, to submit their EBT Planning Advanced Planning Document (PAPD) for FNS approval. Under OMB Control Number 0584-0043, it is estimated that 15 APDs would be submitted each year. As a result, the current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements related to APD documents, which were approved under OMB Control Number 0584-0043, will not change as a result of this rule.

WIC State agencies are required to authorize eligible foods on their WIC food list by federal regulations at 7 CFR part 246.10. Under these regulations, State agencies must review food products for eligibility in accordance with Federal regulations and State agency policies. State agencies are not required to authorize all food products eligible under federal regulations, but generally select foods based on factors such as cost, availability and acceptability to participants. After review, the State agency develops a list of food items available to WIC participants for purchase. State agencies require authorized vendors (i.e., stores authorized to provide WIC foods) to ensure only WIC-authorized food items are purchased. Under an EBT delivery method, authorized WIC vendors have programmed their point-of-sale systems to identify WIC authorized foods and their associated Universal Product Code (UPC) or Price Look-Up (PLU) code as individual products are scanned at the checkout lane.

WIC State agencies using an EBT delivery method provide their authorized vendors with an electronic file containing the State agency's current list of authorized foods. This is known as the Authorized Products List (APL). In EBT system designs, food item UPCs or PLU codes are scanned at the checkout lane and then matched to the UPC or PLU listed on the State specific APL. Food items matching the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available food balance, cannot be

purchased with WIC benefits.

At present, under OMB Control Number 0584-0043, each State agency provides an updated food list annually as part of the State Plan requirements at 7 CFR 246.10(b)(2)(i); and as the food lists are updated. Section 246.12(cc) requires each State agency to use the NUPC database, at a minimum, to submit their APL as they begin statewide rollout and as it is updated. The Department has determined that a State agency operating an EBT delivery method may satisfy these annual and ‘as updated’ reporting requirements by submitting the APL in place of the food list because it contains the brands, sizes and quantities allowed by each WIC State agency. The APLs are updated as new products are added or removed by each WIC State agency. The annual burden for the next three years is based on an average of 37 WIC State agencies expected to be operating WIC EBT during the next three years and who will distribute APL’s to their WIC-authorized vendors. This estimate of 37 EBT operational State agencies is based on implementation projects approved in December 2015 by the Department. Each State agency is estimated to update the APL 2.5 times per week totaling 130 updates per year. Approximately 30 seconds (0.0083 hours) is the estimated time necessary to submit the APL to the Department.

FNS estimates that these final rule provisions will increase the reporting burden for the WIC state and local agencies by 40 hours and 4,810 responses. This final rule does not impact the remaining reporting burden for this collection, nor does it impact the recordkeeping burden. FNS will submit an Information Collection Request clearance package to the Office of Management and Budget (OMB) based on the provisions of this final rule and comments received on this 60-Day Notice. These amended information collection requirements will not become effective until approved by OMB. When OMB has approved these information

collection requirements, FNS will publish a separate action in the Federal Register announcing the approval.

## **Reporting Burden**

Affected Public: The final EBT rule only affects the State, Local, and Tribal Governments respondent group and impacts only the WIC State agencies currently operating WIC EBT systems. While this information collection burden also covers businesses and other for profit organizations, and individuals and households, the rule does not increase the reporting burden for these other respondents.

Estimated Number of Respondents: Out of a total of 9,011,137 respondents for this collection, FNS estimates that these final rule provisions will affect an average of 37 WIC State agencies. This estimate includes 25 WIC State agencies operating EBT in 2016, 38 WIC State agencies operating EBT in 2017, and 47 WIC State agencies operating EBT in 2018. The annual average of 37 State agencies is the sum of the number of State agencies estimated to be EBT operational divided by three years.

Estimated Frequency of Responses per Respondent per year: 2.78 responses. FNS estimates that 37 WIC State agencies will submit an APL 2.5 times per week. Submitting 2.5 APLs per week over 52 weeks per year equals 130 responses per WIC State agency annually. FNS estimates that this revision will change the frequency of State agency responses to 6,533.

Estimated Total Annual Responses: FNS estimates that the final rule provisions concerning the submission of the APL will add 4,810 responses (37 WIC State agencies x 130 estimated responses per respondent) to the collection, increasing the overall total estimated annual responses to 25,046,888.

Estimated Time per Response: FNS estimates that it will take each State agency 30

seconds (0.0083 hours) to submit the APL. The estimated time per response for the state or local agencies is 0.20 and the overall estimated time per response is 0.13. WIC State agencies are not expected to expend additional time to gather or format the requested information for the federal government reporting requirement since this information is already collected in support of each State agency's EBT operations. The estimated time required to maintain and troubleshoot electronic systems is amortized over the expected number of responses.

Estimated Total Annual Burden on Respondents: FNS estimates that the final rule provisions will add 40 hours (4,810 responses X 0.0083 hours per response) to the total burden for the State and local agencies, increasing it from 2,516,924 to 2,516,964. This in turn increases the overall reporting burden for this collection to 3,324,780 burden hours.

Current OMB Inventory: 3,324,740 hours.

Difference (Burden Revisions Requested Due to the Final Rule): 40 hours.

### **Recordkeeping Burden**

Affected Public: State, Local, and Tribal Agencies (including Indian Tribal Organizations and U.S. Territories).

Estimated number of Record-keepers: 11,929

Estimated number of records: 3,011

Total Estimated annual records: 35,919,470

Estimated annual hours per record-keeper: .02 hours

Estimated Total Recordkeeping Burden Hours: 695,758

Current OMB Inventory: 695,758

Difference (Burden Revisions Requested Due to the Final Rule): None.

Estimated Grand Total for Reporting and Recordkeeping Burden: 4,020,537 hours.

The estimated total annual reporting and recordkeeping burden for each type of respondent is shown below:

<b>Respondent</b>	<b>Estimated Number of Respondents</b>	<b>Frequency of Responses per Respondent (annually)</b>	<b>Total Annual Responses (Col. b x c)</b>	<b>Estimated Avg. # of Hours Per Response</b>	<b>Estimated Total Hours (Col. d x e)</b>
<b>Reporting Burden</b>					
State, Local, and Indian Tribal Governments (WIC State agencies and WIC local agencies)	1,929	6,533	12,602,967	0.20	2,516,964
Business or Other For-Profit (WIC Authorized Vendors)	48,621	2.23	108,302	1.77	191,987
Individuals and Households (WIC Participants)	8,960,587	1.38	12,335,620	0.05	615,829
<b>Reporting Grand Total</b>	<b>9,011,137</b>	<b>2.78</b>	<b>25,046,888</b>	<b>0.13</b>	<b>3,324,780</b>
<b>Respondent</b>	<b>Estimated Number of Recordkeepers</b>	<b>Estimated Number of Records</b>	<b>Total Estimated Annual Records</b>	<b>Estimated Time (hours)</b>	<b>Estimated Burden Hours</b>
<b>Recordkeeping Burden</b>					
State, Local, and Tribal Government (State and Local agencies, including Indian Tribal	11,929	3,011	35,919,470	0.02	695,758



Organizations and U.S. Territories)					
<b>Grand Total – Reporting and Recordkeeping</b>	<b>9,023,066</b>	<b>3,014</b>	<b>60,966,358</b>	<b>0.15</b>	<b>4,020,537</b>

Dated: February 19, 2016.

Audrey Rowe,  
Administrator,  
Food and Nutrition Service.

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